SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 17

JAMES LANIER BELL,

Petitioner,

v.

PREFERRED LIFE ASSURANCE SOCIETY OF MONTGOMERY, ALABAMA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

SUPPLEMENTAL BRIEF FOR RESPONDENTS.

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Respondents' counsel appreciate the opportunity granted to file this supplemental brief, and apologize for not being prepared to answer some of the questions asked by members of the Court. Those questions, while relevant and logically pertinent, had never been presented by the petitioner (plaintiff) and had not occurred to respondents' counsel.

Burden of Establishing Jurisdiction.

After all, the petitioner (plaintiff) had the burden to "show in his pleading, affirmatively and distinctly, the existence of whatever is essential to Federal jurisdiction."[1] The jurisdiction of a Federal Court "cannot be helped by presumptions or by argumentative inferences drawn from the pleadings."[2] The plaintiff "must carry throughout the litigation the burden of showing that he is properly in Court."[3]

Laws of Alabama Control Both as to Alleged Tort Liability and as to Contract.

Petitioner (plaintiff) alleged that, "Plaintiff's *contract* was executed in and is subject to the laws of the State of South Carolina" (R. 145, emphasis ours). For the reasons stated on pages 38 and 39 of respondents' original brief, it seemed clear that the *contract* of insurance was governed by the laws of Alabama.[4] Moreover, the defendant Society accepted plaintiff's application at its home office in Montgomery, Alabama, and mailed to the plaintiff his certificate of insurance (R. 137, 151, 161, 63, 64, 133). "When an insurance policy becomes effective upon delivery by mail, the place of contracting is where the policy is posted."[5]

Insofar as the contract is concerned, it, therefore, appears clear that the laws of Alabama control. But

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[1] *Smith* v. *McCullough*, 270 U. S. 456, 459; 70 L. Ed. 682, 685.

[2] *Norton* v. *Larney*, 266 U. S. 511, 515; 69 L. Ed. 413, 416.

[3] *McNutt* v. *Gen. Motors Acc. Corp.*, 298 U. S. 178, 189; 80 L. Ed. 1135, 1141.

[4] *Supreme Council R. A.* v. *Green*, 237 U. S. 531, 542, 59 L. Ed. 1089, 1100 L. R. A. 1916A, 771, 35 Sup. Ct. Rep. 724. *Modern Woodmen of America* v. *Mixer*, 267 U. S. 544, 551, 69 L. Ed. 783, 785; *Sovereign Camp W. of W.* v. *Bolin*, 305 U. S. 66, 75, 83 L. Ed. 45, 50.

[5] American Law Institute, Conflict of Laws, Sec. 317, 11 Am. Jur. Conflict of Laws, Sec. 108, p. 393.

what of any alleged tort? Presumptively the alleged frauds and wrongs of the directors and trustees were committed in Alabama. The only tort, any part of which is claimed to have occurred in South Carolina, is the alleged fraudulent representations which induced the plaintiff to apply for his certificate of insurance (R. 137). Plaintiff's application, however, was accepted by the defendant Society in Alabama and the contract became effective when issued from that State (R. 137, 151, 161, 63, 64, 133). Plaintiff suffered no damage by merely making an application, but he claims to have been damaged by the consummation of a contract based on that application. The contract being made in Alabama, and being governed by the laws of Alabama, that State is also where the plaintiff suffered any damage as the result of the alleged fraud or deceit.

"When a person sustains loss by fraud, the place of wrong is where the loss is sustained, not where fraudulent representations are made."[6] "The place of the wrong, the 'locus delicti', is taken by courts in this country to be the State where the last event necessary to make the actor liable occurs."[7] That is the alleged tort was consummated in Alabama.

To hold that the alleged tort of fraudulently inducing plaintiff to enter into the contract is governed by the laws of South Carolina while the contract is governed by the laws of Alabama would lead to incongruous and unjust results. In his complaint, the plaintiff expressly affirms that his certificate of insurance is in full force and effect (R. 145). In his original brief (page 41) petitioner says, "Petitioner's claim to a money judgment for fraud and deceit

[6] Am. Law Inst. Conflict of Laws, Sec. 377 (4), p. 457; *Isaige* v. *Brown*, 17 How. (U. S.) 183, 15 L. Ed. 208.

[7] *Hunter v. Derby Foods* (2 C. C. A. 1940), 110 F. (2d) 970; 132 A. L. R. 255, 258. 15 C. J. S. Confl. Laws, Sec. 12, p. 899, Note 68. Am. Law Inst. Restatement Confl. of Laws, Sec. 377 (1) p. 455.

is an affirmation, not a rejection or rescission, of his contract." The plaintiff alleges that other members were induced to purchase insurance upon similar fraudulent misrepresentations (Par. 15f, R. 138, and Par. 22b, R. 142). The plaintiff having elected to affirm his membership in the defendant Society—and for the sake of argument overlooking his inconsistency in claiming that he has been damaged by being induced to join—the plaintiff has bound himself that he and the other members should be treated on a parity, and cannot now collect exorbitant punitive damages under the laws of South Carolina, while other members are governed by laws less favorable to them (See pages 38 and 39 of Respondents' original brief).

In Alabama, if the complaint states any sufficient claim for fraud or deceit (See Respondents' original brief, pages 19-21), it does not show such gross and malicious fraud as to warrant the imposition of punitive damages (Same, page 22), and even if it does, those damages must bear proportion to the actual damages sustained or to the extent of the injury likely to result from disregard of duty (Same, pages 24, 25). Possibly in South Carolina the law may be otherwise,[8] but certainly the plaintiff has not sustained the burden of showing that under the law of Alabama, and in view of the nature of the fraud or deceit alleged, when he has actually paid out only $202.35, he may now recover more than $3,000.00.

As An Individual Action for a Receiver for Plaintiff's Protection the Amount in Controversy Is Only Plaintiff's Claim.

Respondents had not understood that the plaintiff sought to sustain the jurisdictional amount on any theory other than (1) plaintiff's claim of punitive damages for himself,

[8] South Carolina cases cited on p. 18 of Petitioner's original brief; *Eaddy v. Greensboro-Fayetteville Bus Lines*, 191 S. C. 538; 5 S. E. 2d 281.

or (2) plaintiff's alleged claim to represent all of the members or the Society itself in a class action (See Respondents' original brief, pages 30 et seq.). However, respondents recognized that in Alabama the plaintiff as the beneficiary of a trust fund might file an individual suit for a receiver to protect that fund.[9] Respondents demonstrated that the trust fund of the Society has never been and is in no danger of being invaded (Respondents' original brief, pages 45 and 46), but if the contrary be assumed, still it is clear that the amount in controversy would be only plaintiff's claim.[10]

Respectfully submitted:

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[9] *Grand Lodge K. of P. v. Shorter*, 219 Ala. 293, 294.

[10] *Lion Bonding & S. Co. v. Karatz*, 262 U. S. 77, 86, citing *Eberhard v. Northwestern Mutual L. Ins. Co.*, 241 Fed. 353, 356.

SUPREME COURT OF THE UNITED STATES.

No. 17.—October Term, 1943.

James Lanier Bell, Petitioner, vs. Preferred Life Assurance Society of Montgomery, Alabama, et al. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[November 8, 1943.]

Mr. Justice Black delivered the opinion of the Court.

The question here is whether petitioner's complaint was properly dismissed on the ground that the matter in controversy did not really and substantially exceed $3,000 as required by §§ 24 and 37 of the Judicial Code.[1]

Filed in the federal court for the Middle District of Alabama, petitioner's complaint alleged that he had been induced to purchase an insurance certificate through fraudulent misrepresentations of respondents' agent bearing upon its actual value, and claimed $200,000 as actual and punitive damages.[2] The record shows that at the time of the dismissal petitioner had paid only $202.35 on his certificate, and that its maximum potential value was only $1,000. From this the District Court declared that it was "apparent to a legal certainty", *St. Paul Mercury Indemnity Co.* v. *Red Cab Company*, 303 U. S. 283, 289, that petitioner could in no event be entitled to more than $1,000, and therefore concluded that the requisite $3,000 was not really and substantially involved. The Circuit Court of Appeals affirmed[3] holding that the claim of $200,000 damages was "entirely colorable for the purpose of conferring jurisdiction" since it was "legally inconceivable" that petitioner's allegations could justify an award in excess of the value of his $1,000 certificate.

[1] 36 Stat. 1091, 1098; U. S. C. Tit. 28, §§ 41, 80. The complaint alleged diversity of citizenship as the basis for federal jurisdiction.

[2] The complaint further alleged official misconduct on the part of certain officers of respondent society, and joined them as separate defendants. Petitioner contends that these allegations with the accompanying prayers for relief are sufficient in themselves to establish that the matter in dispute exceeds $3,000 on any of three theories: A class action under Rule 23 of the Federal Rules of Civil Procedure; a derivative action against the officers for the benefit of the society; or an original action to reorganize a mutual insurance society properly brought by a member. As our decision indicates, we find it unnecessary to pass upon these contentions.

[3] 131 F. 2d 516.

Where both actual and punitive damages are recoverable under a complaint each must be considered to the extent claimed in determining jurisdictional amount.[4] Therefore even though the petitioner is limited to actual damages of $1,000, as both courts held, the question remains whether it is apparent to a legal certainty from the complaint that he could not recover, in addition, sufficient punitive damages to make up the requisite $3,000. If the controlling law is that of South Carolina, where the alleged fraudulent misrepresentations are said to have occurred, petitioner clearly might recover an award exceeding $3,000.[5] Respondents urge however that the law of Alabama, where the insurance certificate was issued and mailed, must control. We need not pass upon this question for we are satisfied that under the law of Alabama as well as that of South Carolina petitioner's allegations of fraud if properly proved might justify an award exceeding $3,000.

Respondents assert that petitioner's complaint does not allege that type of "gross fraud" essential for an award of punitive damages under Alabama law. The Supreme Court of Alabama has declared that in an action for deceit "gross fraud" which will support punitive damages may be defined as "representations made with a knowledge of their falseness (or so recklessly made as to amount to the same thing), and with the purpose of injuring the plaintiff." *Southern Building and Loan Association* v. *Dinsmore*, 225 Ala. 550, 552. In the instant case the complaint alleges that the fraudulent representations "were false, and were known to be false when made and uttered with a reckless disregard for the truth"; that petitioner "relied upon them, and had a right to rely upon them"; and that he "would not have applied for such certificate except for such false representations." Plainly, then, this complaint alleges the equivalent of "gross fraud" as those words are defined by the Alabama courts.[6] And, even if

[4] Barry v. Edmunds, 116 U. S. 550, 560; Scott v. Donald, 165 U. S. 58, 89, 90.

[5] Respondents did not seriously contend otherwise, and the South Carolina cases cited to us apparently foreclosed such a contention: Eaddy v. Greensboro Fayetteville Bus Lines Inc., 191 S. C. 538; Cook v. Metropolitan Life Insurance Co., 186 S. C. 77; Crosby v. Metropolitan Life Insurance Co., 167 S. C. 255. In this latter case it appears that punitive damages of $1,211.70 were allowed although the actual damages were only $11.70.

[6] Had petitioner's complaint been filed in a state court in Alabama, it would have supported a verdict and judgment for punitive damages. The Alabama Supreme Court holds that, "It is not necessary to claim punitive damages specially, for they are not special damages. It is not necessary to allege the matter of aggravation which justifies their recovery." Fidelity Phenix Fire Insurance Company of New York v. Murphy, 226 Ala. 226, 232.

the fraud were not formally alleged to be "gross", a complaint filed in a federal court should not be dismissed for want of jurisdiction because of a mere technical defect such as would make it subject to a special motion to clarify. See *Sparks* v. *England*, 113 F. 2d 579; cf. *Chicago, Rock Island and Pacific Railway Company* v. *Schwyhart*, 227 U. S. 184, 194.

Respondents also maintain that, even if it would warrant some punitive damages, the complaint could not under Alabama law warrant enough to support a judgment of $3,000. It is true as respondents point out that the Alabama Supreme Court has said that the amount of punitive damages "ought . . . to bear proportion to the actual damages sustained;" *Mobile and Montgomery Railroad Co.* v. *Ashcraft*, 48 Ala. 15, 33; and that, while such damages "must rest in large measure within the discretion of the jury", this is not an "unbridled discretion." *Alabama Water Service Co.* v. *Harris*, 221 Ala. 516, 519. But neither in these cases, nor in any others cited to us, has that court held that punitive and actual damages must bear a definite mathematical relationship.[7] That there is no such legal formula seems apparent from the rule relied upon by respondents as the correct Alabama rule regarding the measure of punitive damages, namely that, "The nature of the case should be considered, the character and extent of injury likely to result from disregard of duty, and all the attendant circumstances." *Alabama Water Service Co.* v. *Harris*, *supra*, 519. In the *Harris* case the court further emphasized the wide scope of allowable punitive damages by saying that a jury's award is not to be disturbed if, "allowing all presumptions in favor of" it, the court is not "clearly convinced it is so excessive as to demand the interposition of this court." *Ibid.* Considering these general principles of Alabama law, we are unable to say that under petitioner's complaint evidence could not be introduced at a trial justifying a jury verdict for actual and punitive damages exceeding $3,000. Nor can this controversy as to jurisdictional amount be decided on the assumption "that a verdict, if rendered for that amount, would be excessive

[7] In United States Fidelity and Guarantee Co. v. Millonas, 206 Ala. 147, 154, the court permitted an award of $6,000 after finding that the actual damage suffered could in no event exceed $1,000. And in Ala. Great Southern Railroad Co. v. Sellers, 93 Ala. 9, where the jury returned a verdict of $500, it was held that the trial court did not err in refusing to charge that punitive damages could not be imposed if the plaintiff suffered only nominal actual damage.

and set aside for that reason—a statement which could not, at any rate, be judicially made before such a verdict was in fact rendered." *Barry* v. *Edmunds, supra,* 565.

The judgment of dismissal is reversed and the cause remanded to the district court for further proceedings.

Reversed and remanded.

A true copy.

Test:

Clerk, Supreme Court, U. S.